

B. "Customer Choice" Renewable Portfolio Standard (RPS)

Submitted by Independent Energy Producers Association (IEP)

1. Abstract

IEP's RPS is a market-based program that does not require legislation. The program emphasizes customer choice in procuring renewable energy resources through direct bilateral contract opportunities and the buying/selling of renewable energy credits (RECs). Retail energy providers may be certified as "green" energy providers, if they meet certain standards, thereby providing customers with additional assurances that their retail provider has attained a certain level of renewables in its resource portfolio. The PUC-regulated utility distribution companies (UDC) serve as a "regulatory backstop" to ensure attainment of the RPS. The UDC enters the renewable market, if necessary, to procure renewable energy (kWhs) representing the difference between what the RPS proscribes and what the market achieves on its own. Costs borne by the UDC are passed through to all distribution customers (including direct access customers) not self-procuring renewables. The PUC provides regulatory oversight over the UDC to ensure timely and efficient compliance.

Renewable energy is that defined by existing state law. The RPS would be set to the extent practical at the level of diversity that existed as of 1993 (i.e. renewable kWh as a percentage of total annual kWhs), including a solid-fuel biomass technology band, plus preliminary BRPU winners.

2. Interpretation of Commission's Goals and Rational for Strategy

IEP recognizes and applauds the Commission's strong stand on a market-based approach to developing and fostering renewable resources. As a result of the Commission's Restructuring Decision, dated December 20, 1995 (D. 95-12-063, as revised January 10, 1996). IEP interprets the Commission's renewable policy in the context of restructuring to adhere to the following principles:

- **Maintain Existing Resource Diversity and Foster the Development of New Renewable Resources.** The Commission has stated clearly its goal of "establishing restructuring policies which maintain California's resource diversity for existing resources as well as encourage development of new resources" [D. 95-12-063, at page 146]
- **Foster Market-based Approaches in which Buyers and Sellers Exercise Choice.** The Commission notes that its "market-based" approach will allow buyers and sellers to

search the market for the best renewable bargains and to internalize such costs in their prices without the need for a surcharge to fund renewables development [ibid, p. 150].

- **Investigate Need For Transitional Strategy Affecting the Resource Portfolios of Some California Utilities.** The Commission recognized that it may be appropriate to develop a transitional strategy given the current resource portfolios of some utilities, while preferring that the requirement be set at the same level for all electric utilities on a statewide basis, [ibid, p. 149]. The Commission expects that the minimum renewables levels would be in place beginning 1998 and continuing through 2000, at which point the Commission would revisit whether the requirement should be modified [ibid, p. 150]
- **Utilize Market Mechanisms and Strategies To Foster Competition in Renewable Resources.** The Commission recognized that tradeable, renewable "credits" could/would be available to provide the most flexibility in meeting the renewable standard. The Commission has reiterated its belief that a minimum renewables purchase requirement is the best approach to meet our California's resource diversity goals [ibid, p. 149].

In addition to the goals outlined in the Commission's Restructuring Decision, the Commission raised in its "Procedural Roadmap," dated March 13, 1996 (p. 27-28) the need to determine the answers to certain key questions, including the following:

- **What is the appropriate level for the minimum renewables purchase requirement?** The Commission believes that it may be appropriate to establish floors for certain technology types, in order to maintain the diversity of renewable resources [D. 95-12-063, at page 150]; however, the Commission seeks recommendations from parties as to such technology bands.
- **On whom the obligation should be placed?** The Commission indicated its belief that diversity goals can be achieved by placing the requirement on either retail providers of electricity, or on generators [ibid, p. 149], yet the Commission has yet to determine on whom the obligation should be placed.
- **What should constitute a meaningful penalty for non-compliance?** The Commission notes that a meaningful penalty for noncompliance should be established, but leaves open the question as to whether the "penalty" ought to be punitive (e.g. a state administered "fine") or in the nature of incentives (e.g. financial rewards for achieving a statewide renewable standard in a timely and efficient manner).

- **Is it appropriate to establish a uniform requirement for all electric providers, including utilities on a statewide basis?** It is laudable that the Commission would seek to impose a uniform requirement for all electric utilities on a statewide basis. However, the Commission's jurisdictional authority does not extend to that extent. Accordingly, the Commission must address that which it can accomplish, namely a uniform requirement on those entities subject to its jurisdiction.

The Procedural Roadmap makes clear that the Commission is seeking advice on these key issues as it moves forward in developing and implementing its renewable policy in light of industry restructuring and the creation of increasingly market-based energy markets. IEP has developed a proposal for a statewide renewable policy that addresses each of the goals and questions of the Commission in this matter.

3. *Program Overview and Description*

a. **Origin of the Strategy**

IEP has long advocated resource diversity in electric resource procurement. This position is firmly grounded in rational resource planning and consistent with California law. As part of the California restructuring effort IEP has endorsed a "customer-choice" market-based Renewable Portfolio Standard (RPS) to provide a viable market for renewables.

The Commission's Restructuring Decision presents the first meaningful opportunity for the exercise of this customer choice. As the regulatory paradigm shifts from economic regulation of monopolies to competitive markets, captive ratepayers will be transformed into **customers** with market options. Renewable energy is a **product** that many customers favor. Therefore, customer choice must be the foundation upon which renewable energy is integrated into any sustainable future market.

To assure attainment of state policy goals in the event of market failure, IEP's proposal provides a "regulatory backstop," namely the UDC under the jurisdiction of the CPUC.

b. **IEP Customer-Choice RPS Principles**

IEP's Customer-Choice RPS approach is premised on the following principles:

- **Encouraging Market-forces Rather than Regulation.** IEP's proposal maximizes customer choice and market-based solutions, minimizes regulatory intervention and oversight, and ensures that the overall, statewide RPS standard is attained.

- **Administrative Ease.** IEP's proposal relies on existing institutional/regulatory structures and avoids the need to create new regulatory and administrative processes or institutions.
- **Limiting Potential Jurisdictional Conflicts.** IEP's proposal can be implemented by the Commission itself, and does not require the cooperation of other state or federal agencies. Further, because the proposal falls solely within the jurisdiction of the Commission, the proposals avoids FERC and U.S. Constitution concerns (i.e. commerce clause).
- **Political Viability and Practicality.** IEP's fundamental goal is ensuring that any renewable program (whether RPS or otherwise) results in actual kWh production. IEP's proposal does not require legislation to implement, and under the approach the UDC is financially motivated (via a PBR proceeding) to provide the regulatory backstop role to ensure timely and efficient attainment with the RPS. IEP's proposal avoids attempts to impose new mandates and enforcement/policing mechanisms on market participants not already subject to such regulatory oversight.¹

c. RPS Implementation

Under IEP's customer-choice RPS approach, market participants (including UDCs, supply aggregators, demand aggregators, power marketers/brokers, and bilateral contractors) will have maximum flexibility in developing renewable energy portfolios to match customer demands. To provide customers with the assurance that their renewable purchases actually derive from renewable facilities, renewable providers would be certified as "green marketers" [a elaboration of the green marketers concept is provided below]. Opportunities to purchase renewable energy/RECs would be facilitated through bilateral contracts and/or the purchase of RECs via the market.

¹As alluded to in the Commission's Restructuring Decision, the Commission is considering whether or not to impose a minimum renewable purchase requirement on all retail sellers or generators. Once restructuring is fully implemented with full direct access opportunities, entities potentially subject to the "all retail sellers or generators" approach may include small cogenerators selling "across-the-street" (e.g. schools, hospitals, and government facilities), power marketers, retail aggregators purchasing/selling at retail to customers, and small generators selling "inside the fence."

To monitor the level of market-based compliance, all renewable "certifications" (e.g. contractual commitments) would be forwarded to the local UDC, acting on behalf of the state, for verification and compilation. The UDC will rely on these certifications as the means to measure the amount of renewable purchases in the market, and then compare the amount with the RPS. If the amount of renewables purchased in the market exceeds the RPS, no further action by the UDC is required. If the amount is less than the RPS, then the UDC enters the market (within a three month period) and purchases the requisite renewables to ensure attainment of the state's policy goals.²

Under IEP's RPS approach, each regulated public utility in the State of California would be required to assure that a minimum percentage of renewables (kWh as a percentage of total annual sales) within its distribution service territory are equivalent to that which existed for the utility as of January 1, 1994, plus that which would have existed had Preliminary BRPU winners executed contracts; further, each regulated public utility should assure to the extent practical the diversity of renewable resources within that same service territory at that time, including a solid-fuel biomass technology band. This level of renewables corresponds to approximately 13% of California's statewide energy resource mix. This level represents a reasonable starting point based on extensive analysis in the Electricity Report 1994 and the BRPU.³

²IEP welcomes participation by California's municipal utility districts in this program, but recognize that these entities are not subject to the jurisdiction of the CPUC. However, IEP believes that its customer-choice RPS approach is equally applicable to municipal utilities assuming that legislation were approved mandating municipal utility participation.

³IEP recognizes that, in spite of existing state law and the Commission's policies fostering renewable resource development, regulated California utilities varied greatly in the amount of renewables in their energy portfolio as of January 1, 1994. In implementing IEP's program, the Commission should endeavor to transition the level of renewables that existed for each utility as of January 1, 1994, to a state-wide standard (as a percentage of total energy sales) that would apply comparably to all entities subject to the Commission's jurisdiction, thereby making each utility more equivalent in terms of their commitment to meeting state and Commission renewable policy objectives. One mechanism to accomplish this goal would be to apportion the purchase requirement for new renewables required to attain the RPS (i.e. an amount equivalent to the BRPU preliminary winners) among the regulated California utilities in such a manner as to ensure greater comparability and equivalency among all Commission regulated entities.

The definition of renewable energy used herein is that prescribed in existing state law (Public Utilities Code, Section 701.1), including wind, solar, biomass (including landfill gas and waste-to-energy), and geothermal energy.

Due to the non-bypassable nature of the program, all customers under the regulatory jurisdiction of the CPUC, including direct access customers, will share equitably in the costs of meeting the state's policy goals. However, the direct access customer has the choice (1) of self procurement (through such mechanisms as a bilateral contract with renewable generator(s), through the production credit market, or via an aggregator), or (2) of paying the UDC for procuring the requisite renewables on the customers behalf. If the direct access customer chooses to self procure it will have to provide verification/certification to the UDC. Upon receipt of the requisite verification/certification, the UDC will subtract an equivalent amount of renewables from its own purchasing plans. In the event that a direct access customer certifies to the UDC that a specified amount of renewables will be procured and subsequently fails to verify this, then the UDC will charge the direct access customer through the distribution bill for those renewables procured by the UDC. Under this approach, the UDC and its customers will not bear any additional cost for renewables, but society will be assured of achieving the requisite level of renewables.

d. Features To Enhance Renewable Energy Market

d.i. Renewable TradeMark

IEP believes that a renewable trademark to market "*Green Power*" will help provide consumers with additional assurance that the retail marketer selling renewables has been certified to do so. The concept behind a renewable trademark is similar to a "green seal" or an "organic" signature on products sold to consumers; each trademark provides the consumer with assurance that the product is warranted as attaining a certain product standard.

Presently, an environmental rating agency known as Eco-Rating International (ERI) provides a blueprint for the type of agency that could certify renewable energy as meeting state standards. ERI, founded in 1992 following the Rio Summit, is an environmental rating agency, and its function is to assess a project or company's environmental standing by taking reference to the most stringent international standards. ERI utilizes an evaluation instrument known as the "Eco-Rating" (trademark) which is applied in a manner similar to financial rating instruments utilized by Moody's Investors and Standard and Poors. The extent to which a company is deemed "green" is reflected in a numerical rating system and a color-coded scheme (i.e. shades of green).

The renewable trademark program would provide valuable benefits to both renewable retailers and consumers in terms of product definition, quality assurance, and consumer protections.

d.ii. Renewable Energy Credit(s)

A system of Renewable Energy Credits (RECs) will be developed to foster a secondary market in renewables. These credits will be created by the production of renewable energy (kWh).

RECs will be allocated to renewable generators, and they will be tradeable. However, RECs associated with existing QF generators continuing in the fixed energy price period of their contracts will accrue to the UDC and their market value will be applied to reduce the CTC associated with QF contracts. RECs associated with existing QF contracts in the SRAC period of their contracts will accrue to the QF.

d.iii. UDC As Regulatory Backstop

Irrespective of a renewables program, all customers, including direct access customers, will continue to receive a monthly bill from the UDC for distribution related charges, a public benefits charge, and a CTC. Thus, the UDC will continue to have an accounting, reporting, and most likely metering relationship with all customers, including direct access customers. The UDC is the logical entity for passing through to all customers, including direct access customers, the costs for attaining a renewable portfolio that are not realized through self-procurement in the market. Given that the distribution function(s) will remain a monopoly function, the UDC will not incur "competitive disadvantage" resulting from this proposal, because the UDC is not "in competition" to provide its services.

d.iv. Administrative Accountability

The UDC role as "regulatory backstop" will be evaluated as part of the UDC's non-generation PBR proceeding. The UDC PBR mechanism will include incentive mechanisms fostering the timely and least-cost acquisition of renewables to ensure attainment of the RPS. The UDC will be financially rewarded for obtaining renewables in a timely manner for the least cost. In addition, the UDC will be guaranteed a rate of return for all prudently incurred administrative expenses.

e. Additional Concepts Being Considered As Potential Options In A "Customer Choice" RPS Approach

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IEP is investigating additional concepts and mechanisms to foster a vibrant and competitive market for renewable energy in light of industry restructuring.

e.i. CTC Credit Option

The Commission should consider a policy allowing direct access customers entering into bilateral contracts with renewable QFs to be eligible for a credit of all or a portion of the competition transition charge (CTC). Under this approach, an entity that reduces the UDC's CTC associated with QF contracts (for example, if a municipality or large consumer bought-out a biomass QF contract from the utility in order to ensure its continued operation) would receive a comparable credit for CTC costs which it would otherwise pay to the UDC. Alternatively, if a customer purchases 100 percent of its energy from a certified renewable purchaser, then that customer would be credited as having paid 100 percent of the CTC. If the customer purchases 50 percent renewables, then it would be credited as having paid 50 percent of its CTC. If, as some propose, the CTC is valued at around 4 cents kWh, this approach provides customers with a real incentive to purchase the most cost-effective renewable resources available.

e.ii. State Purchase

Renewable resources are acknowledged through existing state law (see Public Utilities Code, Section 701) and Commission policy to provide important benefits to the state and public at large, including resource diversity, economic development and jobs, and environmental benefits. In order to ensure that the public continues to realize these benefits, the state on behalf of the public should act to ensure the continued presence of renewable resources in the state's energy portfolio.

The state is a very large consumer of energy. For example, the California Department of General Services (DGS) and the California Department of Water Resources (DWR) purchase vast amount of energy to meet their own requirements. These entities represent in the aggregate some of the largest load in the state of California.

If state agencies such as DGS and DWR were required to meet a portion of their total load through the purchase of renewable technologies, then the public benefits associated with renewable energy production would be realized and paid for by the public at large (as represented through its purchasing agent the respective state agency).

4. Issues To Be Addressed In Proposals

a. What Is The Obligation?

a.1 How is "renewables generation" defined for purposes of qualifying for tradable "Renewables Energy Credits" (RECs) under this proposed program? Do existing and incremental utility-owned renewable-resource generation qualify for Renewable Energy Credits?

Renewables generation is defined on a kWh basis (i.e. energy generated). The definition of renewable energy reflects that prescribed in existing law (Public Utilities Code, Section 701.1), including wind, solar, biomass (including solid-fuel, landfill gas and waste-to-energy), and geothermal energy.

The RPS is established to reflect the level of renewables that existed in 1993, plus what would have occurred if the Preliminary BRPU winners executed contracts. To the extent that the RPS includes existing utility-owned renewables, then the RPS percentage would be adjusted accordingly.

a.2 What are renewable energy credits? How do they relate to energy portfolio management?

Renewable energy credits (RECs) represent a unit of energy production (one credit per kWh of production). RECs may be used to supplement and/or supplant bilateral contracts to ensure that parties attain their renewable portfolio.

a.3 How is a diversity of renewables encouraged?

Under IEP's RPS approach, each regulated public utility in the State of California would be required to assure that a minimum percentage of renewables (kWh as a percentage of total annual sales) within its distribution service territory are equivalent to that which existed for the utility as of January 1, 1994, plus that which would have existed had Preliminary BRPU winners executed contracts; further, each regulated public utility should assure to the extent practical the diversity of renewable resources within that same service territory at that time, including a solid-fuel biomass technology band. To the extent that the amount of renewables required under the RPS exceeds that which existed as of January 1, 1994 (e.g. due to load growth), then all renewable technologies would be expected to compete to serve the additional demand.

a.4 Are currently high-cost technologies or pre-commercial technologies fostered by this program?

IEP's RPS proposal fosters certain high-cost renewable technologies that have proven to be commercially/operationally viable, specifically solid-fuel biomass. While encouraging the diversity that existed as of January 1, 1994, IEP's approach maximizes competition among all the diverse technologies to meet demand. To the extent that certain technologies are "pre-commercial," IEP would support their continued development and operation outside the RPS standard as part of a public goods charge.

a.5 How is renewable self-generation handled? Is self-generated renewable energy eligible for Renewable Energy Credits (RECs), or for other means of support?

Renewable self-generation would be treated as equivalent to a "bilateral," direct access arrangement (wherein the buyer and seller are the same entity). Under this arrangement, the self-generator would (1) avoid a commensurate UDC renewable charge and (2) own any RECs associated with the production of the renewable energy.

a.6 How are hybrid fossil-fuel/renewable facilities handled?

If a facility is certified as a "green seller," then the production from that unit is deemed renewable for purposes of the RPS and the RECs. The eligibility criteria for designation as a green seller are yet to be developed, and would be expected to allow for a limited amount of fossil-based generation to provide for operational constraints (e.g. start-up). Presently, some renewable QFs are allowed up to 25% of their fuel to be fossil-based in order to provide for operational constraints.

a.7 Does out-of-state generation qualify for Renewable Energy Credits (RECs)? Is it desirable or necessary to protect in-state California renewable energy generators from out-of-state competition? Is it possible?

IEP's definition of renewables is that prescribed in existing state law (Public Utility Code Section 701.1) which does not distinguish between in-state and out-of-state generation. As a practical matter, a program that defines renewables and then provides exclusions for out-of-state generation may not satisfy the Commerce Clause of the U.S. Constitution.

a.8 If hydro is included, how are practical issues associated with hydropower handled?

Public Utilities Code Section 701.1 explicitly identifies renewables such as wind, solar, biomass, and geothermal energy. IEP does not contemplate that hydro-based generation would be included in the RPS.⁴

a.9 How is utility-owned generation of distributed renewables handled? Does the proposal permit or prohibit Renewable Energy Credits from being awarded to distributed utility-owned renewable power not sold through the Power Exchange? Does the proposal permit Renewable Energy Credits to accrue to applications that may involve the cross-subsidization of generation with T&D savings, or vice versa?

The proposal does not explicitly address utility owned-distributed generation.

The UDC's Performance Based Ratemaking (PBR) mechanism would be adapted to address concerns such as self-dealing and cross-subsidization between utility functions as regards renewables. UDCs should be precluded from entering into bilateral contracts with affiliated entities.

a.10 What is the level for the requirement? How does this level relate to the level of renewables from 1990 to the present? Does the level of the requirement increase over time, and, if so, at what rate?

Under IEP's RPS approach, each regulated public utility in the State of California would be required to assure that a minimum percentage of renewables (kWh as a percentage of total annual sales) within its distribution service territory are equivalent to that which existed for the utility as of January 1, 1994, plus that which would have existed had Preliminary BRPU winners executed contracts; further, each regulated public utility should assure to the extent practical the diversity of renewable resources within that same service territory at that time, including a solid-fuel biomass technology band. The RPS does not increase over time.

a.11 Describe how, if at all, the compliance obligation adjusts during the transition period.

The compliance obligation does not adjust during the transition period.

⁴If hydropower were included in the RPS approach, the RPS (i.e. the percentage level) would have to be increased to reflect this fact. Further, the RPS would have to be adapted to address, among other matters, the competitive advantages inherent in large, federally subsidized hydropower facilities.

a.12 Does the proposal include a uniform requirement for all electric providers, on a statewide basis?

The proposal relies on market opportunities and maximum customer choice to attain the RPS. All California UDCs subject to the jurisdiction of the Commission will be subject to the uniform requirement, thereby providing the regulatory "backstop" to fill-the-gap between market effects and the RPS. The UDC "requirement" will vary on an annual basis depending on the success to which renewable energy is able to garner market share. However, UDC costs, if any, associated with fulfilling the requirement will be recovered from all customers/end-users of the transmission distribution system (excepting direct access customers choosing to self-procure renewables).

IEP welcomes participation by California's municipal utility districts in this program, but recognize that these entities are not subject to the jurisdiction of the CPUC. However, IEP believes that its customer-choice RPS approach is equally applicable to municipal utilities assuming that legislation were approved mandating municipal utility participation.

a.13 What is the time-horizon for the program?

The RPS program should begin as soon as possible, but no later than January 1, 1998. In light of the state's existing statutory commitments to resource diversity and renewable resources which are expected to persist, the specific RPS program to help attain the statewide goals and objectives should continue at a minimum until such time as a fully competitive market has emerged characterized by full direct access, many buyers and sellers, etc.

a.14 Is the requirement established on a percentage of megawatts or percentage of megawatt-hours basis?

Percentage of megawatt-hours basis (i.e. energy and not capacity).

a.15 Does the proposal establish floors for certain technology types? What is the rational for a technology floor, if proposed?

The proposal seeks to ensure the level of diversity (kWhs) that existed as of January 1, 1994. The proposal provides a technology floor for solid-fuel biomass in recognition of specific non-energy related public benefits derived from its operation. Above and beyond this amount, renewables would compete to meet demand.

b. Where Is The Obligation To Comply?

b.1 On whom is the requirement applied? Is the requirement applied only to entities under the Commission's jurisdiction, or is it applied statewide?

The regulatory mandate related to the RPS would be imposed on the regulated utility distribution companies (UDCs) which are within the jurisdiction of the Commission. Entities not under the Commission's jurisdiction are not subject to the regulatory requirements. However, this proposal is designed to foster to the maximum extent possible the voluntary participation of market participants through the market-based mechanism structured around the principle of "customer choice."

IEP welcomes participation by California's municipal utility districts in this program, but recognize that these entities are not subject to the jurisdiction of the CPUC. However, IEP believes that its customer-choice RPS approach is equally applicable to municipal utilities assuming that legislation were approved mandating municipal utility participation.

b.2 Are regulated retail providers treated similarly to unregulated retail providers? If not, what are the differences?

Entities not under the Commission's jurisdiction are not subject to the regulatory requirements. However, this proposal is designed to foster, to the maximum extent possible, the voluntary participation of market participants, via a market-based mechanism structured around the principle of "customer choice." The regulatory requirements are imposed on those entities subject to the regulatory jurisdiction of the Commission. The costs associated with implementing the program will be reflected in a distribution surcharge, all distribution customers (whether served by regulated or unregulated retail providers) will participate in funding the program on a non-bypassable basis. Customers can control these costs by self-procuring renewable resources through the direct access market.

b.3 What is the penalty for non-compliance? Should this penalty be interpreted as a cost-cap for the program?

The primary incentive to attain the RPS is market-based. However, to the extent that a sufficient "green market" fails to materialize, the program is designed to financially motivate the UDCs (e.g. via a PBR mechanism) to procure in a timely and efficient manner the requisite renewable energy to attain the RPS. To the extent that the UDCs are ineffective in meeting this obligation, they would not realize the financial rewards of doing so.

b.4 How is non-compliance determined? Who is responsible for determining non-compliance and for resolving disputes arising from such a determination?

On an annual basis, the Commission will review the performance of each UDC as regards attainment of the RPS. The UDC will receive from each of its direct access customers self-procuring renewables a certification (e.g. portions of contract language) that makes clear the direct access customer contracted for an amount of renewables. The UDCs will sum these certifications and determine the remaining amount of renewables required to attain the RPS. The UDC will be provided a 3-month "true-up" period to enter the market to procure a sufficient amount of renewables to ensure attainment of the standard. The Commission will determine as part of the UDCs PBR proceeding whether compliance has been accomplished and address any disputes that may arise.

b.5 What provisions add flexibility to compliance, if any?

The Commission will provide monitoring and oversight. The UDCs PBR proceeding provide the vehicle to ensure compliance in a timely and efficient manner. To maximize the flexibility of the UDC to serve its function as regulatory backstop, the UDC will have a true-up period in which to acquire renewables through the REC market.

b.6 How does the program ensure that the policy and its costs are non-bypassable, such as the CTC or the Public Goods surcharge?

Costs borne by the UDC are passed through to **all** distribution customers, including direct access customers (except direct access customers certifying self-procurement), as part of a distribution-based surcharge. This ensures that the costs for the renewable program are borne by all customers on a non-bypassable basis.

c. How Are Renewable Energy Credits Initially Allocated?

c.1 How are Renewable Energy Credits (RECs) generated from existing renewable facilities (QFs and utility-owned) initially allocated? What impact does the initial allocation have on whether a vigorous market for RECs, characterized by many buyers and sellers, forms?

RECs associated with utility-owned renewables accrue to the utility. The RECs associated with QFs continuing in their fixed price energy payment period also accrue to the utility and their value is used to reduce any CTC associated with QF projects. The RECs associated with QFs not in their fixed price energy payment period, but rather SRAC payments for energy, accrue to the QF. In all other instances, RECs are allocated based on the contractual arrangements entered into by bilateral parties.

c.2 What is the relationship of the allocation of renewable energy credits and the CTC or Public Goods surcharge? Will RECs accrue to technologies, such as on- and off-grid

renewables, in a way that would encourage customers to disconnect from the grid and avoid the CTC?

To the extent the UDC derives value from RECs associated with existing contracts or existing plant facilities receiving CTC treatment, any value/benefit associated with the RECs should pass-through to the ratepayers by reducing the associated CTC.

IEP is investigating the feasibility of creating additional market-based incentives to foster renewables and ensure attainment of the RPS, thereby further relieving the UDC of its obligation to purchase renewables. Under investigation is the potential for direct access customers who serve their load from renewables to realize a credit against any CTC obligation equal to the CTC reduction achieved.

c.3 If customers or ratepayers are initially allocated RECs, how are the credits administered?

RECs are a tool to facilitate a market in renewable energy and help evidence attainment of the RPS. One credit is associated with one kWh of renewable production. Credits (and the verification thereof) are administered by the UDC under the direction of the CPUC as prescribed by law or policy.

c.4 How would the proposed Renewable Energy Credit allocation affect negotiations to buy out existing QF contracts? Would it encourage or discourage such buyouts? Would it make them more or less cost effective to rate payers?

The extent to which the allocation of RECs will affect negotiations to buyout existing QF contracts will be a function of the economic value associated with the RECs. This value remains unknown at this time.

c.5 How does the initial allocation deal with the possibility of windfall profits accruing to individual renewables generators, or types of generators?

[see answer to c.4]

c.6 Does the proposal potentially increase the value of utility-owned renewable resources in a way that would encourage their divestiture? If so, how should ratepayer interests be addressed?

If the renewable market is sufficiently vibrant, then the UDC's renewable purchase obligation will diminish. This may result in the utility-owned renewables having less value

under the ownership of the UDC, but more value under the ownership of an unaffiliated market-player interested in direct access market opportunities. This may encourage divestiture of certain renewable assets. The ratepayer should be indifferent, having received market value for the divested asset (plus CTC as appropriate).

d. How Is The Program Administered?

d.1 What agency certifies the Renewable Energy Credits?

The CPUC can be the entity certifying the RECs, although another state agency could easily accomplish this fact.

d.2 What mechanisms are proposed for trading of Renewable Energy Credits? How do the trading mechanisms relate to the initial allocation of Renewable Energy Credits?

To the extent that IEP understands the trading mechanisms proposed by other parties, IEP's proposed trading mechanisms is no different.

d.3 What mechanisms are proposed for program oversight and mid-course corrections?

The Commission will provide monitoring and oversight. The UDCs PBR mechanism provide the vehicle to ensure compliance in a timely and efficient manner.

d.4 What agency monitors and enforces compliance with the program, and how is it carried out?

The Commission will provide monitoring and oversight. The UDCs PBR mechanism provide the vehicle to ensure compliance in a timely and efficient manner.

e. Cost-Related Issues

e.1 What are the costs associated with the program, and who pays?

The costs of the program are dependent on the success of the bilateral market for renewable energy. If the bilateral renewable market is successful, then the cost to UDC ratepayers is zero. To the extent that any UDC costs arise, then all the UDCs distribution customers participate in funding the program through a non-bypassable public goods charge.

e.2 What cost-containment measures, if any, are provided?

The rigors of the competitive market are the primary forces for containing costs. Retail "green marketers" will compete to lower the portfolio costs associated with renewable energy while meeting the demands of the customers exercising choice in the marketplace.

e.3 If the program utilizes floors for certain technology-types, what are the cost implications?

IEP's proposal prescribes only a signal technology band for solid-fuel biomass. This minimizes the costs associated with a technology band approach, and ensures that competition for renewables is as broad as possible. This approach is expected to minimize the total cost for the program while providing a mechanism to ensure maintenance of the existing level of benefits derived from renewable technologies including solid-fuel biomass.

e.4 Will implementation of the program lead to cost-shifting between consumer groups or regions of the state?

The implementation of a public goods charge pursuant to the RPS approach should not result in any cost-shifting among consumer groups. Regarding the issue of cost-shifting between regions, implementation of the program will help attain the policy goals established by the state legislature during the 1980s by ensuring that utilities which failed to meet their renewable resource obligation do so in a timely and efficient manner. Cost shifting does not materialize when UDCs are motivated to accomplish policy goals previously enunciated by the state legislature and the Commission.

e.5 How is competition within and between renewable technologies encouraged? Between existing renewables facilities and potential new facilities?

IEP's proposal fosters competition among all the renewable technologies to "capture" that portion of the renewable supply that exceeds that which existed as of January 1, 1994. In addition, to the extent that load-growth occurs in jurisdictions under the CPUC authority, then the size of the renewables will increase concomitantly, and all renewable technologies will compete to meet this additional demand.

e.6 What implications, if any, does the proposal have in defining the roles of the UDC and of competitive suppliers of electricity?

Assuming the UDC is functionally unbundled (as directed by the Commission) from the utilities transmission and generation functions, yet the distribution services remain regulated monopoly

functions, then the UDC should be financially indifferent to the direct and/or indirect effect that any renewable program has on the competitive position of individual generators. Because the RPS surcharge is non-bypassable and will be charged to all direct access customers (excepting those choosing to self-procure renewables), then the RPS surcharge does not impose any competitive disadvantage on the UDC vis-a-vis the retail distribution business. However, if the UDC is not competitive in its procurement of renewables to attain the RPS standard, then the risk remains that direct access customers will procure such renewables from other direct access retailers.

e.7 What is the consistency of this proposal in relation to cost-related guidance provided by the PUC Roadmap?

IEP believes that its approach conforms to the Commission's cost concerns, by minimizing administrative and procurement costs while maximizing the diversity benefits derived by sustaining as diverse a portfolio as practical via the marketplace.

f. How Does The Program Fit With Other Aspects Of Electric Industry Reform?

f.1 Is the program compatible with the existence of an Independent System Operator? A Power Exchange? A Direct Access Market? Is the proposal consistent with the Commission's vision of the role of the Power Exchange and ISO?

Nothing in the IEP proposal is incompatible with the Commission's vision of the role of the ISO and the Power Exchange in a restructured market.

f.2 Is the proposal dependent in any way on the Power Exchange or ISO? If so, are any additional protocols necessary?

No.

f.3 Does the proposal involve conflicts of interest between distribution and competitive retail service? If so how are they resolved?

Implementation of the renewable RPS is separate from the competitive market for non-renewable energy. Accordingly, the competition between the UDC and direct access providers will not be affected by implementation of the standard. All customers, including direct access customers, will be subject to the renewables public goods charge unless the direct access customers choose to procure such resources on their own. Furthermore, assuming the UDC is functionally unbundled from the utilities transmission and generation functions, then the UDC

should be financially indifferent to the direct and/or indirect effect that any renewable program has on the competitive position of individual generators.

f.4 How does the program avoid conflicts of jurisdiction between state and federal levels?

IEP's proposal is totally within the jurisdiction of the Commission to implement because the purchase requirement is placed solely on the state-regulated utility distribution company. Accordingly, the proposal does not raise questions of FERC jurisdiction nor does it raise commerce clause concerns, because this program can be implemented by the Commission on its own action and the program does not require legislative action. No state and/or federal jurisdictional issues should arise via this proposal. This assures that the program can be implemented in a timely and efficient manner, and that it will not be delayed due to jurisdictional and legal appeals.

f.5 What is the relationship between the Proposal and Direct Access "Green Marketing"?

IEP believes that a renewable trademark to market "Green Power" will help provide consumers with additional assurance that the retail marketer selling renewables has been certified to do so. The concept behind a renewable trademark is similar to a "green seal" or an "organic" signature on products sold to consumers; each trademark provides the consumer with assurance that the product is warranted as attaining a certain product standard.

Presently, an environmental rating agency known as Eco-Rating International (ERI) provides a blueprint for the type of agency that could certify renewable energy as meeting state standards. ERI, founded in 1992 following the Rio Summit, is an environmental rating agency, and its function is to assess a project or company's environmental standing by taking reference to the most stringent international standards. ERI utilizes an evaluation instrument known as the "Eco-Rating" (trademark) which is applied in a manner similar to financial rating instruments utilized by Moody's Investors and Standard and Poors. The extent to which a company is deemed "green" is reflected in a numerical rating system and a color-coded scheme (i.e. shades of green).

The renewable trademark program would provide valuable benefits to both renewable retailers and consumers in terms of product definition, quality assurance, and consumer protections.

f.6 What is the relationship between the proposal and Performance-Based Ratemaking (PBR)? Does the proposal place Renewable Energy Credits under PBR, or exclude Renewable Energy Credits from PBR?

A PBR mechanism will be used to provide the Commission the opportunity to measure (and police) the extent to which the UDC has procured the requisite amount of renewables in a timely and efficient manner. The PBR should be structured to provide financial incentives to the UDC to meet the state's policy goals and objectives.

f.7 Does the program create any potential market-power problems involving the generation market or Renewable Energy Credits (RECs)?

To the extent that market-based solutions are employed (i.e. creating opportunities for many buyers and sellers of RECs), then market power concerns lessen.

f.8 Does the proposal relate to any consumer protection or consumer education efforts? For example,

a. Rules for new entrants: Does the proposal entail any licensing requirements for new entrants? Should compliance with the minimum renewables requirement be a condition of selling power at the retail level?

b. Consumer education: Does the proposal require any consumer education? For example, how does the proposal protect consumers from "green marketing" programs where marketers collect twice -- once for credit sales and once for "green" power sales, thereby not increasing total green power? This could entail, e.g., disclosure requirements to inform consumers about the amount of renewable energy they are purchasing that is supported by Renewable Energy Credits, or statements regarding price stability or price risks associated with the seller's resource portfolio. Would RECs accrue to utilities from green pricing programs where utilities have unique customer information and access?

The certification of "green marketers" will have state-approved criteria to protect against consumer fraud, and provide the mechanism to prosecute entities who fail to abide by the rules governing the certification. The purpose would be to provide necessary consumer protections, disclosure, and information/access.

Because the RPS mandate applies to only to the UDC, licensing requirements on all retail providers would not necessary in order to implement the program (licensing requirements may be necessary and appropriate for other reasons). Moreover, compliance with the RPS would not be a condition for selling power at the retail level.

The "green marketing" program would be designed to provide explicit consumer protections. In addition to being warranted by the state for having certain renewable attributes, a "green seller" would be expected to provide consumers with information related to the source and type of renewable energy being sold, the amount of renewable energy in the portfolio (including the amount of RECs), and other information deemed appropriate.